

VETO MESSAGE RELATING TO DISPOSITION OF
MUSCLE SHOALS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT APPROVAL THE JOINT RESOLUTION (S. J. RES. 49) ENTITLED "A JOINT RESOLUTION TO PROVIDE FOR THE NATIONAL DEFENSE BY THE CREATION OF A CORPORATION FOR THE OPERATION OF THE GOVERNMENT PROPERTIES AT AND NEAR MUSCLE SHOALS IN THE STATE OF ALABAMA; TO AUTHORIZE THE LETTING OF THE MUSCLE SHOALS PROPERTIES UNDER CERTAIN CONDITIONS; AND FOR OTHER PURPOSES

FEBRUARY 17 (calendar day, MARCH 3), 1931.—Read; ordered to lie on the table and be printed

To the Senate:

I return herewith, without my approval, Senate Joint Resolution 49, "To provide for the national defense by the creation of a corporation for the operation of the Government properties at and near Muscle Shoals in the State of Alabama; to authorize the letting of the Muscle Shoals properties under certain conditions; and for other purposes."

This bill proposes the transformation of the war plant at Muscle Shoals, together with important expansions, into a permanently operated Government institution for the production and distribution of power and the manufacture of fertilizers.

Disregarding for the moment the question of whether the Federal Government should or can manage a power and fertilizer manufacturing business, we should examine this proposal from the point of view of the probabilities of success as a business, even if efficiently managed. Such an analysis involves a consideration of the capital invested, the available commercial power, the operating costs, the revenue to be expected, and the profit and loss involved from this set-up. The figures and estimates given herein are furnished by the War Department upon the authority of the Chief of Engineers.

VALUE OF THE OLD PLANT AND FURTHER CAPITAL OUTLAY REQUIRED

The following properties and proposed extensions are embraced in the proposed project:

(a) Wilson Dam and its hydroelectric equipment valued at \$37,000,000 being the original cost of \$47,000,000 less \$10,000,000 applicable to navigation.

(b) The steam power plant at Muscle Shoals valued at \$5,000,000 being a reduction for depreciation of \$7,000,000 from the original cost of \$12,000,000.

(c) Proposed further additions to the electrical plant at Muscle Shoals costing \$9,000,000.

(d) Proposed construction of Cove Creek Dam with hydroelectric plant with transmission line to Wilson Dam \$41,000,000 of which \$5,000,000 may be attributed to flood control and improvement of navigation or, say, \$37,000,000.

(e) Proposed construction of transmission lines for wholesale distribution of power within the transmission area—\$40,000,000.

(f) Nitrate plants, quarries, etc., at Muscle Shoals which originally cost \$68,555,000 but upon which no valuation is placed at present.

The total valuation of the old property to be taken over for the power portion of the project is therefore \$42,000,000 after the above deductions from original cost. The new expenditures from the Treasury applicable to the power business are estimated at \$90,000,000, less \$5,000,000 which might be attributable to flood control, or a total of \$127,000,000 of capital in the electrical project. This sum would be further increased by accumulated interest charge during construction. As shown later on several millions further would be required for modernizing the nitrate plants. The total requirement of new money from the Federal Treasury for the project is probably \$100,000,000 even if no further extensions were undertaken.

AMOUNT OF POWER AVAILABLE FROM THIS PROJECT

Assuming the additional power given by the construction of the Cove Creek Dam and the use of steam power for five months in the dry season each year, and taking the average load factor from experience in that region, about 1,300,000,000 kilowatt-hours of continuous power could be produced annually. Considered as a general power business a portion of this must be held in reserve to protect consumers, leaving a net of about 1,000,000,000 kilowatt-hours annually of salable power. This amount would be somewhat increased if a large proportion of 24-hour load were applied to fertilizer manufacture.

The secondary power for a period of less than seven months in the year is not regarded as of any present commercial value.

OPERATING COSTS

The following is the estimated annual overhead and operating cost of the electrical end of the project including the steam plant necessary to convert 7-month secondary power into primary power as stated above:

Interest at 4 per cent per annum on capital of \$127,000,000-----	\$5,080,000
Amortization-----	1,890,000
Operating and maintenance cost of hydroelectric plant-----	775,000
Operating and maintenance cost of steam plant-----	850,000
Operation and maintenance cost of transmission lines-----	550,000
Total-----	\$9,145,000

The estimated cost of production and distribution is, therefore, about 9.1 mills per kilowatt-hour. If only part of the transmission lines were constructed it would decrease capital and operating charges but would not comply with the requirement of equitable distribution through the transmission area.

ESTIMATED GROSS INCOME

The purpose of the bill is to provide production and wholesale distribution of surplus power and to give preference to States, municipalities, and cooperative organizations. It further provides that the policy of the Government must be to distribute the surplus power equitably amongst States, counties, and municipalities within transmission distance of Muscle Shoals and provides for the construction of transmission lines to effect this purpose. Such a transmission system for wholesale purposes only is estimated to cost \$40,000,000. If it is proposed to sell power at retail to householders, then there would need be a great increase in the estimates of capital outlay and operation costs for such distribution.

The average gross income of the power companies in that territory, including retail as well as wholesale power, is about 12 mills per kilowatt-hour. This includes retail residential power averaging something over 50 mills per kilowatt-hour. Miscellaneous industrial power realizes about 10 mills per kilowatt-hour. The power sold wholesale to other companies and those engaged in municipal distribution averages about 7.2 mills per kilowatt-hour.

It is impossible to compute Muscle Shoals income under this project upon a basis which includes retail power sales, as this is a project for wholesale distribution only. It is impossible to compute it upon the basis of miscellaneous industrial rates as sales for industrial purposes from Muscle Shoals would presumably be mainly for manufacture of fertilizers and it would not be possible to average 10

mills per kilowatt-hour. A rate of not over 2 mills would be a large charge for such power. While the load factor would be improved by large use for this purpose, the net result, however, would be to diminish the gross income below the above rates from municipal and miscellaneous industrial services.

Assuming that the whole 1,000,000,000 kilowatt-hours should be sold to municipalities or other power distributors, it would on the basis of the realizations of the private companies of 7.2 mills yield a gross annual income to this project of about \$7,200,000, or a loss upon this basis of nearly \$2,000,000 annually. This territory is now supplied with power and to obtain such an income it would be necessary to take the customers of the present power companies. To secure these customers it would be necessary to undercut the rates now made by them. It is difficult to estimate the extent to which it would be necessary to go in such rate cutting in order to secure the business. In any event it would of course diminish estimated income and increase the losses.

It is obvious that any estimate of income contains a large element of conjecture as the proportions of industrial and municipal load can not be foretold. But any estimate of the income of the project as set up by this legislation will show a loss.

FERTILIZER MANUFACTURE

The plants at Muscle Shoals were originally built for a production of nitrates for use in war explosives. I am advised by the War Department that the very large development in the United States by private enterprise in the manufacture of synthetic nitrogen now affords an ample supply covering any possible requirements of war. It is therefore unnecessary to maintain this plant for any such purposes.

This bill provides that the President for a period of 12 months may negotiate a lease of the nitrate plants for fertilizer manufacture under detailed limitations, but in failure to make such a lease the bill makes it mandatory upon the Government to manufacture nitrogen fertilizers at Muscle Shoals by the employment of existing facilities or by modernizing existing plants or by any other process. I may state at once that the limitations put upon lessees in the bill are such that this provision is of no genuine importance. Inquiries have been made of the most responsible and experienced concerns that might possibly undertake such lease and they have replied that under the conditions set out in the bill it is entirely impractical for them to make any bid. The leasing provision is therefore of no utility; it may at once be dismissed. In consequence the project we have to consider under this bill is the manufacture of fertilizers by the Federal Government.

The Department of Agriculture reports that these plants are now more or less obsolete and that with power at even 2 mills per kilowatt-hour, with proper charges included, could not produce the products for which they are constructed as cheaply as these products are now being sold in the wholesale markets. Therefore, it would be necessary to modernize the equipment at an unknown cost in millions. There is no evidence as to the costs of nitrogen fertilizers by the newer equipment, and there is therefore no basis upon which to estimate the results to the Government from entering upon such a competitive business. It can, however, be stated with assurance that no chemical industry with its constantly changing technology and equipment, its intricate problems of sales and distribution, can be successfully conducted by the Government.

PROPOSED ADMINISTRATION

The first essential of all business is competent management. Although the bill provides for the management by three directors, the Congress must from the nature of our institutions be the real board of directors and with all the disadvantages to a technical business that arise from a multitude of other duties, changing personnel, changing policies, and regional interests. These three directors are to have political qualifications, as it is stipulated that not more than two shall be of one political party. They are to receive \$50 per diem, but are limited to \$7,500 each for the first year and \$5,000 annually thereafter. The act provides that:

"All members of the board shall be persons that profess a belief in the feasibility and wisdom, having in view the national defense and the encouragement of interstate commerce, of producing fixed nitrogen under this act of such kinds and at such prices as to induce the reasonable expectation that the farmers will buy said products, and that by reason thereof the corporation may be a self-sustaining and continuing success."

In other words, they are to say that they believe in Government manufacture of fertilizers, and that it can be made a success on this set-up. We are thus supposed to appoint business administrators on the basis of their beliefs rather than their experience and competency. These directors are manifestly to have a political complexion and apparently the entire working force is likewise to have such a basis of selection, as the usual provision for the merit service required by law in most other Federal activities is omitted. Three men able to conduct a one hundred and fifty million dollar business can not be found to meet these specifications.

GENERAL CONSIDERATIONS

I am firmly opposed to the Government entering into any business the major purpose of which is competition with our citizens. There are national emergencies which require that the Government should temporarily enter the field of business, but they must be emergency actions and in matters where the cost of the project is secondary to much higher considerations. There are many localities where the Federal Government is justified in the construction of great dams and reservoirs, where navigation, flood control, reclamation or stream regulation are of dominant importance, and where they are beyond the capacity or purpose of private or local government capital to construct. In these cases power is often a by-product and should be disposed of by contract or lease. But for the Federal Government deliberately to go out to build up and expand such an occasion to the major purpose of a power and manufacturing business is to break down the initiative and enterprise of the American people; it is destruction of equality of opportunity amongst our people; it is the negation of the ideals upon which our civilization has been based.

This bill raises one of the important issues confronting our people. That is squarely the issue of Federal Government ownership and operation of power and manufacturing business not as a minor by-product but as a major purpose. Involved in this question is the agitation against the conduct of the power industry. The power problem is not to be solved by the Federal Government going into the power business, nor is it to be solved by the project in this bill. The remedy for abuses in the conduct of that industry lies in regulation and not by the Federal Government entering upon the business itself. I have recommended to the Congress on various occasions that action should be taken to establish Federal regulation of interstate power in cooperation with State authorities. This bill would launch the Federal Government upon a policy of ownership and operation of power utilities upon a basis of competition instead of by the proper Government function of regulation for the protection of all the people. I hesitate to contemplate the future of our institutions, of our Government, and of our country if the preoccupation of its officials is to be no longer the promotion of justice and equal opportunity but is to be devoted to barter in the markets. That is not liberalism, it is degeneration.

This proposal can be effectively opposed upon other and perhaps narrower grounds. The establishment of a Federal-operated power business and fertilizer factory in the Tennessee Valley means Federal control from Washington with all the vicissitudes of national politics and the tyrannies of remote bureaucracy imposed upon the people of that valley without voice by them in their own resources,

the overriding of State and local government, the undermining of State and local responsibility. The very history of this project over the past 10 years should be a complete demonstration of the ineptness of the Federal Government to administer such enterprise and of the penalties which the local community suffers under it

This bill distinctly proposes to enter the field of powers reserved to the States. It would deprive the adjacent States of the right to control rates for this power and would deprive them of taxes on property within their borders and would invade and weaken the authority of local government.

Aside from the wider issues involved the immediate effect of this legislation would be that no other development of power could take place on the Tennessee River with the Government in that field. That river contains two or three millions of potential horsepower, but the threat of the subjection of that area to a competition which under this bill carries no responsibility to earn interest on the investment or taxes will either destroy the possibility of private development of the great resources of the river or alternately impose the extension of this development upon the Federal Government. It would appear that this latter is the course desired by many proponents of this bill. There are many other objections which can be raised to this bill, of lesser importance but in themselves a warranty for its disapproval.

It must be understood that these criticisms are directed to the project as set up in this bill; they are not directed to the possibilities of a project denuded of uneconomic and unsound provisions nor is it a reflection upon the value of these resources.

I sympathize greatly with the desire of the people of Tennessee and Alabama to see this great asset turned to practical use. It can be so turned and to their benefit. I am loath to leave a subject of this character without a suggestion for solution. Congress has been thwarted for 10 years in finding solution, by rivalry of private interests and by the determination of certain groups to commit the Federal Government to Government ownership and operation of power.

The real development of the resources and the industries of the Tennessee Valley can only be accomplished by the people in that valley themselves. Muscle Shoals can only be administered by the people upon the ground, responsible to their own communities, directing them solely for the benefit of their communities and not for purposes of pursuit of social theories or national politics. Any other course deprives them of liberty.

I would therefore suggest that the States of Alabama and Tennessee who are the ones primarily concerned should set up a commission of their own representatives together with a representative from

the national farm organizations and the Corps of Army Engineers; that there be vested in that commission full authority to lease the plants at Muscle Shoals in the interest of the local community and agriculture generally. It could lease the nitrate plants to the advantage of agriculture. The power plant is to-day earning a margin over operating expenses. Such a commission could increase this margin without further capital outlay and should be required to use all such margins for the benefit of agriculture.

The Federal Government should, as in the case of Boulder Canyon, construct Cove Creek Dam as a regulatory measure for the flood protection of the Tennessee Valley and the development of its water resources, but on the same bases as those imposed at Boulder Canyon—that is, that construction should be undertaken at such time as the proposed commission is able to secure contracts for use of the increased water supply to power users or the lease of the power produced as a by-product from such a dam on terms that will return to the Government interest upon its outlay with amortization. On this basis the Federal Government will have cooperated to place the question into the hands of the people primarily concerned. They can lease as their wisdom dictates and for the industries that they deem best in their own interest. It would get a war relic out of politics and into the realm of service.

HERBERT HOOVER.

THE WHITE HOUSE,
March 3, 1931.

[S. J. Res. 49. Seventy-first Congress of the United States of America; At the Third Session, Begun and held at the City of Washington on Monday, the first day of December, one thousand nine hundred and thirty.]

Joint resolution to provide for the national defense by the creation of a corporation for the operation of the Government properties at and near Muscle Shoals in the State of Alabama; to authorize the letting of the Muscle Shoals properties under certain conditions; and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural and industrial development, and to aid navigation and the control of destructive flood waters in the Tennessee River and Mississippi River Basins, there is hereby created a body corporate by the name of the "Muscle Shoals Corporation of the United States" (hereinafter referred to as the corporation). The board of directors first appointed shall be deemed the incorporators and the incorporation shall be held to have been effected from the date of the first meeting of the board. This Act may be cited as the "Muscle Shoals Act of 1931."

SEC. 2. (a) The board of directors of the corporation (hereinafter referred to as the board) shall be composed of three members, not more than two of whom shall be members of the same political party, to be appointed by the President, by and with the advice and consent of the Senate. The board shall organize by electing a chairman, vice chairman, and other officers, agents, and employees, and shall proceed to carry out the provisions of this Act.

(b) The terms of office of the members first taking office after the approval of this Act shall expire as designated by the President at the time of nomination, one at the end of the second year, one at the end of the fourth year, and one at

the end of the sixth year, after the date of approval of this Act. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring six years from the date of the expiration of the term for which his predecessor was appointed.

(c) Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(d) Vacancies in the board so long as there shall be two members in office shall not impair the powers of the board to execute the functions of the corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the board.

(e) Each of the members of the board shall be a citizen of the United States and shall receive compensation at the rate of \$50 per day for each day that he shall be actually engaged in the performance of the duties vested in the board, to be paid by the corporation as current expenses, not to exceed, however, one hundred and fifty days for the first year after the date of the approval of this Act, and not to exceed one hundred days in any year thereafter. Members of the board shall be reimbursed by the corporation for actual expenses (including traveling and subsistence expenses) incurred by them while in the performance of the duties vested in the board by this Act.

(f) No director shall have any financial interest in any public-utility corporation engaged in the business of distributing and selling power to the public nor in any corporation engaged in the manufacture, selling, or distribution of fixed nitrogen, or any ingredients thereof, nor shall any member have any interest in any business that may be adversely affected by the success of the Muscle Shoals project as a producer of concentrated fertilizers.

(g) The board shall direct the exercise of all the powers of the corporation.

(h) All members of the board shall be persons that profess a belief in the feasibility and wisdom, having in view the national defense and the encouragement of interstate commerce, of producing fixed nitrogen under this act of such kinds and at such prices as to induce the reasonable expectation that the farmers will buy said products, and that by reason thereof the corporation may be a self-sustaining and continuing success.

Sec. 3. (a) The chief executive officer of the corporation shall be a general manager, who shall be responsible to the board for the efficient conduct of the business of the corporation. The board shall appoint the general manager, and shall select a man for such appointment who has demonstrated his capacity as a business executive. The general manager shall be appointed to hold office for ten years, but he may be removed by the board for cause, and his term of office shall end upon repeal of this Act, or by amendment thereof expressly providing for the termination of his office. Should the office of general manager become vacant for any reason, the board shall appoint his successors as herein provided.

(b) The general manager shall appoint, with the advice and consent of the board, two assistant managers who shall be responsible to him, and through him, to the board. One of the assistant managers shall be a man possessed of knowledge, training, and experience to render him competent and expert in the production of fixed nitrogen. The other assistant manager shall be a man trained and experienced in the field of production and distribution of hydro-electric power. The general manager may at any time, for cause, remove any assistant manager, and appoint his successor as above provided. He shall immediately thereafter make a report of such action to the board, giving in detail the reason therefor. He shall employ, with the approval of the board, all other agents, clerks, attorneys, employees, and laborers.

(c) The combined salaries of the general manager and the assistant managers shall not exceed the sum of \$50,000 per annum, to be apportioned and fixed by the board.

Sec. 4. Except as otherwise specifically provided in this Act, the corporation—

(a) Shall have succession in its corporate name.

(b) May sue and be sued in its corporate name, but only for the enforcement of contracts and the defense of property.

(c) May adopt and use a corporate seal, which shall be judicially noticed.

(d) May make contracts, but only as herein authorized.

(e) May adopt, amend, and repeal by-laws.

(f) May purchase or lease and hold such personal property as it deems necessary or convenient in the transaction of its business, and may dispose of any such personal property held by it.

(g) May appoint such officers, employees, attorneys, and agents as are necessary for the transaction of its business, fix their compensation, define generally

their duties, require bonds of them and fix the penalties thereof, and dismiss at pleasure any such officer, employee, attorney, or agent, and provide a system of organization to fix responsibility and promote efficiency.

(h) The board shall require that the general manager and the two assistant managers, the secretary and the treasurer, the bookkeeper or bookkeepers, and such other administrative and executive officers as the board may see fit to include, shall execute and file before entering upon their several offices good and sufficient surety bonds, in such amount and with such surety as the board shall approve.

(i) Shall have all such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the corporation, including the right to exercise the power of eminent domain.

Sec. 5. The board is hereby authorized and directed—

(a) To operate existing plants for experimental purposes, to construct, maintain, and operate experimental plants at or near Muscle Shoals for the manufacture of fertilizer or any of the ingredients comprising fertilizer for experimental purposes;

(b) To contract with commercial producers for the production of such fertilizers or fertilizer materials as may be needed in the Government's program of development and introduction in excess of that produced by Government plants. Such contracts may provide either for outright purchase by the Government or only for the payment of carrying charges on special materials manufactured at the Government's request for its program;

(c) To arrange with farmers and farm organizations for large-scale practical use of the new forms of fertilizers under conditions permitting an accurate measure of the economic return they produce;

(d) To cooperate with National, State, district, or county experimental stations or demonstration farms, for the use of new forms of fertilizer or fertilizer practices during the initial or experimental period of their introduction;

(e) The board shall manufacture fixed nitrogen at Muscle Shoals by the employment of existing facilities (by modernizing existing plants), or by any other process or processes that in its judgment shall appear wise and profitable for the fixation of atmospheric nitrogen. The fixed nitrogen provided for in this Act shall be in such form and in combination with such other ingredients as shall make such nitrogen immediately available and practical for use by farmers in application to soil and crops.

(f) Under the authority of this Act the board may donate not exceeding 1 per centum of the total product of the plant or plants operated by it to be fairly and equitably distributed through the agency of county demonstration agents, agricultural colleges, or otherwise as the board may direct for experimentation, education, and introduction of the use of such products in cooperation with practical farmers so as to obtain information as to the value, effect, and best methods of use of same.

(g) The board is authorized to make alterations, modifications, or improvements in existing plants and facilities.

(h) To establish, maintain, and operate laboratories and experimental plants, and to undertake experiments for the purpose of enabling the corporation to furnish nitrogen products for military and agricultural purposes in the most economical manner and at the highest standard of efficiency.

(i) The board shall have power to request the assistance and advice of any officer, agent, or employee of any executive department or of any independent office of the United States, to enable the corporation the better to carry out its powers successfully, and the President, shall if in his opinion the public interest, service, and economy so require, direct that such assistance, advice, and service be rendered to the corporation, and any individual that may be by the President directed to render such assistance, advice, and service shall be thereafter subject to the orders, rules, and regulations of the board and of the general manager.

(j) Upon the requisition of the Secretary of War or the Secretary of the Navy to manufacture for and sell at cost to the United States explosives or their nitrogenous content.

(k) Upon the requisition of the Secretary of War the corporation shall allot and deliver without charge to the War Department so much power as shall be necessary in the judgment of said department for use in operation of all locks, lifts, or other facilities in aid of navigation.

(l) To produce, distribute, and sell electric power, as herein particularly specified.

(m) No products of the corporation shall be sold for use outside of the United States, her Territories and possessions, except to the United States Government for the use of its Army and Navy or to its allies in case of war.

SEC. 6. In order to enable the corporation to exercise the powers vested in it by this Act—

(a) The exclusive use, possession, and control of the United States nitrate plants numbered 1 and 2, located respectively, at Sheffield, Alabama, and Muscle Shoals, Alabama, together with all real estate and buildings connected therewith, all tools and machinery, equipment, accessories, and materials belonging thereto, and all laboratories and plants used as auxiliaries thereto; the fixed-nitrogen research laboratory, the Waco limestone quarry, in Alabama, and Dam Numbered 2, located at Muscle Shoals, its power house, and all hydroelectric and operating appurtenances (except the locks), and all machinery, lands, and buildings in connection therewith, and all appurtenances thereof are hereby entrusted to the corporation for the purposes of this Act.

(b) The President of the United States is authorized to provide for the transfer to the corporation of the use, possession, and control of such other real or personal property of the United States as he may from time to time deem necessary and proper for the purposes of the corporation as herein stated.

SEC. 7 (a) The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to venue of civil suits.

(b) The corporation shall at all times maintain complete and accurate books of accounts.

SEC. 8. (a) The board shall file with the President and with the Congress, in December of each year, a financial statement and a complete report as to the business of the corporation covering the preceding fiscal year. This report shall include the total number of employees and the names, salaries, and duties of those receiving compensation at the rate of more than \$2,500 a year.

(b) The board shall require a careful and scrutinizing audit and accounting by the General Accounting Office during each governmental fiscal year of operation under this Act, and said audit shall be open to inspection to the public at all times and copies thereof shall be filed in the principal office of the Muscle Shoals Corporation at Muscle Shoals in the State of Alabama. Once during each fiscal year the President of the United States shall have power, and it shall be his duty, upon the written request of at least two members of the board, to appoint a firm of certified public accountants of his own choice and selection which shall have free and open access to all books, accounts, plants, warehouses, offices, and all other places, and records, belonging to or under the control of or used by the corporation in connection with the business authorized by this Act. And the expenses of such audit so directed by the President shall be paid by the board and charged as part of the operating expenses of the corporation.

SEC. 9. The board is hereby empowered and authorized to sell the surplus power not used in its operations and for operation of locks and other works generated at said steam plant and said dam to States, counties, municipalities, corporations, partnerships, or individuals, according to the policies hereinafter set forth, and to carry out said authority the board is authorized to enter into contracts for such sale for a term not exceeding ten years and in the sale of such current by the board it shall give preference to States, counties, or municipalities purchasing said current for distribution to citizens and customers: *Provided further*, That all contracts made with private companies or individuals for the sale of power, which power is to be resold for a profit, shall contain a provision authorizing the board to cancel said contract upon two years' notice in writing, if the board needs said power to supply the demands of States, counties, or municipalities.

SEC. 10. It is hereby declared to be the policy of the Government to distribute the surplus power generated at Muscle Shoals equitably among the States, counties, and municipalities within transmission distance of Muscle Shoals.

SEC. 11. In order to place the board upon a fair basis for making such contracts and for receiving bids for the sale of such power it is hereby expressly authorized, either from appropriations made by Congress or from funds secured from the sale of such power to construct, lease, or authorize the construction of transmission lines within transmission distance in any direction from said Dam Numbered 2 and said steam plant: *Provided*, That if any State, county, municipality, or other public or cooperative organization of citizens or farmers, not organized or doing business for profit, but for the purpose of supplying electricity to its own citizens or members, or any two or more of such municipalities or organizations, shall construct or agree to construct a transmission line to Muscle Shoals, the board is hereby authorized and directed to contract with such State, county, municipality, or other organization, or two or more of them, for the sale of electricity for a term not exceeding thirty years, and in any such case

the board shall give to such State, county, municipality, or other organization ample time to fully comply with any local law now in existence or hereafter enacted providing for the necessary legal authority for such State, county, municipality, or other organization to contract with the board for such power: *Provided further*, That all contracts entered into between the corporation and any municipality or other political subdivision shall provide that the electric power shall be sold and distributed to the ultimate consumer without discrimination as between consumers of the same class, and such contract shall be void if a discriminatory rate, rebate, or other special concession is made or given to any consumer or user by the municipality or other political subdivision: *And provided further*, That any surplus power not so sold as above provided to States, counties, municipalities, or other said organizations, before the board shall sell the same to any person or corporation engaged in the distribution and resale of electricity for profit, it shall require said person or corporation to agree that any resale of such electric power by said person or corporation shall be sold to the ultimate consumer of such electric power at a price that shall not exceed an amount fixed as reasonable, just, and fair by the Federal Power Commission; and in case of any such sale if an amount is charged the ultimate consumer which is in excess of the price so deemed to be just, reasonable, and fair by the Federal Power Commission, the contract for such sale between the board and such distributor of electricity shall be declared null and void and the same shall be canceled by the board.

SEC. 12. Five per centum of the gross proceeds received by the board for the sale of power generated at Dam Numbered 2, or from the steam plant located in that vicinity, or from any other steam plant hereafter constructed in the State of Alabama, shall be paid to the State of Alabama; and 5 per centum of the gross proceeds from the sale of power generated at Cove Creek Dam, hereinafter provided for, shall be paid to the State of Tennessee. Upon the completion of said Cove Creek Dam the board shall ascertain how much excess power is thereby generated at Dam Numbered 2, and from the gross proceeds of the sale of such excess power $2\frac{1}{2}$ per centum shall be paid to the State of Alabama and $2\frac{1}{2}$ per centum to the State of Tennessee. In ascertaining the gross proceeds from the sale of such power upon which a percentage is paid to the States of Alabama and Tennessee the board shall not take into consideration the proceeds of any power sold to the Government of the United States, or any department of the Government of the United States used in the operation of any locks on the Tennessee River, or for any experimental purpose, or for the manufacture of fertilizer or any of the ingredients thereof, or for any other governmental purpose. The net proceeds derived by the board from the sale of power and any of the products manufactured by the corporation, after deducting the cost of operation, maintenance, depreciation, and an amount deemed by the board as necessary to withhold as operating capital, shall be paid into the Treasury of the United States at the end of each calendar year.

SEC. 13. The Secretary of War is hereby empowered and directed to complete Dam Numbered 2 at Muscle Shoals, Alabama, and the steam plant at nitrate plant numbered 2, in the vicinity of Muscle Shoals, by installing in Dam Numbered 2 the additional power units according to the plans and specifications of said dam, and the additional power unit in the steam plant at nitrate plant numbered 2. *Provided*, That the Secretary of War shall not install the additional power unit in said steam plant until, after investigation, he shall be satisfied that the foundation of said steam plant is sufficiently stable or has been made sufficiently stable to sustain the additional weight made necessary by such installation.

SEC. 14. It is hereby declared to be the policy of the Government to utilize the Muscle Shoals properties for the fixation of nitrogen for agricultural purposes in time of peace.

SEC. 15. The Secretary of War is hereby authorized, with appropriations hereafter to be made available by the Congress, to construct, either directly or by contract to the lowest responsible bidder, after due advertisement, a dam in and across Clinch River in the State of Tennessee, which has by long usage become known and designated as the Cove Creek Dam, according to the latest and most approved designs of the Chief of Engineers, including its power house and hydro-electric installations and equipment for the generation of at least two hundred thousand horsepower, in order that the waters of the said Clinch River may be impounded and stored above said dam for the purpose of increasing and regulating the flow of the Clinch River and the Tennessee River below, so that the maximum amount of primary power may be developed at Dam Numbered 2 and at any and all other dams below the said Cove Creek Dam.

SEC. 16. In order to enable and empower the Secretary of War to carry out the authority hereby conferred, in the most economical and efficient manner, he is hereby authorized and empowered in the exercise of the powers of national defense in aid of navigation, and in the control of the flood waters of the Tennessee and Mississippi Rivers, constituting channels of interstate commerce, to exercise the right of eminent domain and to condemn all lands, easements, rights of way, and other area necessary in order to obtain a site for said Cove Creek Dam, and the flowage rights for the reservoir of water above said dam and to negotiate and conclude contracts with States, counties, municipalities, and all State agencies and with railroads, railroad corporations, common carriers, and all public utility commissions and any other person, firm, or corporation, for the relocation of railroad tracks, highways, highway bridges, mills, ferries, electric-light plants, and any and all other properties, enterprises, and projects whose removal may be necessary in order to carry out the provisions of this Act. When said Cove Creek Dam and transportation facilities and power house shall have been completed, the possession, use, and control thereof shall be intrusted to the corporation for use and operation in connection with the general Muscle Shoals project and to promote flood control and navigation in the Tennessee River, and in the Clinch River.

SEC. 17. The corporation, as an instrumentality and agency of the Government of the United States for the purpose of executing its constitutional powers, shall have access to the Patent Office of the United States for the purpose of studying, ascertaining, and copying all methods, formulæ, and scientific information (not including access to pending applications for patents) necessary to enable the corporation to use and employ the most efficacious and economical process for the production of fixed nitrogen, or any essential ingredient of fertilizer, and any patentee whose patent rights may have been thus in any way copied, used, or employed by the exercise of this authority by the corporation shall have as the exclusive remedy of a cause of action to be instituted and prosecuted on the equity side of the appropriate district court of the United States for the recovery of reasonable compensation. The Commissioner of Patents shall furnish to the corporation, at its request and without payment of fees, copies of documents on file in his office.

SEC. 18. The Government of the United States hereby reserves the right, in case of war or national emergency declared by Congress, to take possession of all or any part of the property described or referred to in this Act for the purpose of manufacturing explosives or for other war purposes; but, if this right is exercised by the Government, it shall pay the reasonable and fair damages that may be suffered by any party whose contract for the purchase of electric power or fixed nitrogen or fertilizer ingredients is hereby violated, after the amount of the damages have been fixed by the United States Court of Claims in proceedings instituted and conducted for that purpose under rules prescribed by the court.

SEC. 19. (a) All general penal statutes relating to the larceny, embezzlement, conversion, or to the improper handling, retention, use, or disposal of public moneys or property of the United States, shall apply to the moneys and property of the corporation and to moneys and properties of the United States intrusted to the corporation.

(b) Any person who, with intent to defraud the corporation, or to deceive any director or officer of the corporation or any officer or employee of the United States (1) makes any false entry in any book of the corporation, or (2) makes any false report or statement for the corporation, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than five years, or both.

(c) Any person who shall receive any compensation, rebate, or reward, or shall enter into any conspiracy, collusion or agreement, express or implied, with intent to defraud the corporation or wrongfully and unlawfully to defeat its purposes shall, on conviction thereof, be fined not more than \$5,000 or imprisoned not more than five years, or both.

SEC. 20. In order that the board may not be delayed in carrying out the program authorized herein the sum of \$10,000,000 is hereby authorized to be appropriated for that purpose from the Treasury of the United States, of which not to exceed \$2,000,000 shall be made available with which to begin construction of Cove Creek Dam during the calendar year 1931.

SEC. 21. That all appropriations necessary to carry out the provisions of this Act are hereby authorized.

SEC. 22. That all Acts or parts of Acts in conflict herewith are hereby repealed.

SEC. 23. That this Act shall take effect immediately.

SEC. 24. The right to alter, amend, or repeal this Act is hereby expressly declared and reserved.

SEC. 25. That for twelve months following the passage of this Act, the President of the United States is hereby given authority to lease, for a term not exceeding fifty years, to any person, firm, or corporation, the nitrate plants now owned by the Government at Muscle Shoals, Alabama. Said lease shall include the Waco quarry, the railroad switches connecting said quarry with the Southern Railway, and other structures connected therewith and necessary for the operation of said railroad, for the operation of said Waco quarry and for the operation of said nitrate plants numbered 1 and 2, but not including steam generating plants. The lease shall also include the machinery, tools, and equipment connected with said quarry, said railroad switches, and said nitrate plants; also, the houses and residences in the vicinity of said quarry and said nitrate plants for the purpose of housing the employees and others needed in the operation of said quarry, said railroad and said nitrate plants, but not including houses and buildings connected with either of said steam plants and used and occupied or useful for the occupation of employees and others operating said steam plants and not including that portion of the reservation west of Spring Creek. Said lease shall be made upon the following conditions, to wit:

(a) The rental to be paid for the leasing of such property shall be in such amounts and payable at such times as in the judgment of the President shall be fair and just.

(b) The lessee shall covenant to keep said property in first-class condition during the entire term of said lease.

(c) The lessee shall covenant to operate said plants and use said property exclusively in the production and manufacture of fertilizer and fertilizer ingredients to be used in the manufacture or production of fertilizer, and if, in the manufacture of fertilizer or fertilizer ingredients, a by-product is produced which is not an ingredient of fertilizer, the lessee shall have authority to sell and dispose of such by-product as the lessee shall see fit and shall likewise have authority to process such by-product so as to prepare the same for a market: *Provided, however,* That in consideration of the lessee complying with the requirements as to the manufacture of fertilizer as prescribed in subsection (d) of this section, the lessee shall have the right during the term of the lease to purchase under provisions of section 26 hereof, an amount of primary power from the corporation equal to 15 per centum of the amount of power used by the lessee in the production of fertilizer, but such 15 per centum of power so purchased shall be entirely independent of, and not used in connection with the leased premises, nor shall the power so purchased be used for the processing or further manufacture of any product produced or manufactured on the leased premises except such by-products as are not ingredients of fertilizer, and in no way shall said power or any machinery operated by it be connected directly or indirectly with the power used for the production of fertilizer or fertilizer ingredients on said leased premises, and no part of the property herein leased shall be used either directly or indirectly for any purpose in connection with the said 15 per centum of power to which the said lessee is given a preferential right: *Provided further,* That the said lessee shall be entitled to such quantity of secondary power, subject to all the conditions herein set forth applying to said 15 per centum of primary power as in the judgment of the President is fair and equitable.

(d) Said lease shall also provide that there must be manufactured under said lease annually at least a prescribed amount of nitrogenous plant food of a kind and quality and in a form available as plant food and capable of being applied directly to the soil in connection with the growth of crops; and that such lease shall also contain a stipulation requiring the lessee to produce within three years and six months from the date such lease shall become effective such fertilizer or fertilizer ingredients containing not less than ten thousand tons of fixed nitrogen, and shall require periodic increases in quantity of such fertilizer or fertilizer ingredients from time to time as the market demands may reasonably require. Such lease shall also provide that such increases shall, within twelve years after such lease becomes effective, reach the maximum production capacity of such plant or plants as the board may find to be economically adapted to the fixation of nitrogen, if the reasonable demands of the market shall justify the same, except when the nitrogen produced is required for national defense, or when the market demands for the same are satisfied by the maintenance in storage and unsold of such fertilizer or fertilizer ingredients containing at least two thousand five hundred tons of fixed nitrogen, but whenever said stock in storage shall fall below the quantity containing two thousand five hundred tons of fixed nitrogen, the production of such nitrogen, and the manufacture of such fertilizer or fertilizer ingredients shall thereupon be resumed. Said lease shall also provide that the sale of such fertilizer or fertilizer ingredients to be used as fertilizer by the said

lessee shall be at a price to include the cost of production and not exceeding 8 per centum profit on the turnover produced, and the cost shall include whatever may be paid to the Government for the use of that part of Government property employed by the lessee in manufacturing such fertilizer or fertilizer ingredients to be used as fertilizer and also not exceeding 6 per centum on any capital invested by the lessee in improvements to existing plants or in additional plants employed in the manufacture of fertilizer or fertilizer ingredients to be used as fertilizer, and shall include a reasonable actual carrying charge (exclusive of 8 per centum profit thereon) on the stocks of such fertilizer and fertilizer ingredients as are held in storage and unsold for a year or more as the market demands as above provided shall be satisfied. There shall not be included as part of the cost of producing such fertilizer or fertilizer ingredients any royalty for the use by such lessee of any patent, patent right, or patented process belonging to the lessee, or in which the lessee has any interest, or belonging to any subsidiary or allied corporation, or belonging to or controlled by any officer or agent of the lessee of any such allied or subsidiary corporation, and if the lessee should buy any patent, patent right, or patented process with the hope and expectation of thereby reducing the cost of manufacturing such fertilizer or fertilizer ingredients, or of processing any by-product as hereinbefore permitted, then such sum of money as shall be so paid by the lessee shall be considered and treated in the accounting of the cost of such fertilizer or fertilizer ingredients as investment in the nature of plant account, and not as current expenses, and such costs shall be written off on the expiration of any junior patent or license so acquired. For the annual determination of the cost of such fertilizer and fertilizer ingredients there shall be appointed by the board a production engineer, and by the lessee another production engineer and by these a firm of certified public accountants, and these three shall proceed to ascertain and compute the cost of producing such fertilizer and fertilizer ingredients; and in the event of any disagreement the two said engineers shall select a third production engineer who shall hear and consider the contentions and decide the issues, and such decision shall be binding upon all parties for the year for which the determination shall have been made. A copy of such audit and decision shall be filed each year with the board and by it preserved. The expenses incident to this provision shall be paid by the lessee and shall be charged as an item in the cost of producing such fertilizer or fertilizer ingredients. If such annual cost determination discloses that any purchasers have paid a cost for fertilizer or fertilizer ingredients in excess of that allowable under this Act, then the lessee shall refund such excess to the respective purchasers.

(e) The said lessee shall give to the said corporation a good and sufficient bond to be approved by the President of the United States, conditioned upon monthly payments to the corporation during the term of said lease for all the power sold by the said corporation to the said lessee.

SEC. 26. The corporation hereinbefore referred to, operating the steam plants at Muscle Shoals and Dam Numbered 2 and any other steam and hydroelectric power facilities which may hereafter be constructed or built as hereinbefore provided in this Act, shall supply the said lessee with the power necessary for the operation of the properties leased and for the other manufacturing purposes mentioned in subdivision (c) of section 25 hereof at a price which shall be deemed fair and just by the President and the board.

SEC. 27. For a period of twelve months after the passage of this Act, all the provisions of this Act relating to the activities of said corporation in the manufacture and production of fertilizer and fertilizer ingredients and to the operation of any of the property authorized to be leased by this Act are hereby suspended; and if, within said period, the President leases the property authorized to be leased, such suspension shall continue during the entire time said lease is in effect.

SEC. 28. If within twelve months after the passage of this Act, no lease is made by the President as herein authorized, then authority to make such lease shall cease and sections 25, 26, and 27 shall, at the end of said twelve months' period, become null and void and all the other provisions hereof, which have been suspended for said period of twelve months, shall at once go into full force and effect.

NICHOLAS LONGWORTH,
Speaker of the House of Representatives.
 CHARLES CURTIS,
*Vice President of the United States and
 President of the Senate.*

